HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.20462 OF 2006

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Between:

Shri Siva Sankara Godavari Sand and Boat Workers' Labour Contract Co-operative Society Ltd., Kesevapuram Village, Tallarevu Mandal, East Godavari District, rep. by its President, Gubbala Rama Dasu.

..... Petitioner

AND

The Collector (Sand Auctions), East Godavari District, Kakinada & others

.....Respondents

:: O R D E R ::

Counsel for the Petitioner : Sri Seetharam Chaparla

Counsel for the Respondents : Government Pleader for Panchayat Raj

25th October, 2006

Per G.S.SINGHVI, C.J.

In this petition, the petitioner has prayed for grant of a declaration that the action of the respondents to conduct auction of leasehold rights of sand in respect of Govalanka-Pillanka Reach No.22 is illegal, arbitrary and contrary to the spirit of Rule 9-P of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short, 'the Rules'). It has further prayed for issue of a mandamus to the respondents to consider its application dated 18-9-2006 for grant of lease for the second year in respect of the said reach.

The Facts:

In response to auction notification dated 2-1-2006 issued by the competent authority, the petitioner, through its representative, Gubbala Rama Dasu, participated in the auction held for grant of leasehold rights of sand in respect of Govalanka-Pillanka Reach No.22 along with other left over reaches and packages. The petitioner offered an amount of Rs.1,17,000/-. District Level Committee (Sand Auctions), East Godavari, Kakinada, in its meeting held on 2-6-2006, considered the offer made by the representative of the petitioner and decided to grant leasehold rights in his favour for an amount of Rs.1,20,000/- for the remaining lease period i.e., from 27-3-2006 to 30-9-2006. Accordingly, order dated 27-3-2006 was issued by Member-Convener, District Level Committee (Sand Auctions), East Godavari, Kakinada for grant of lease to Gubbala Rama Dasu subject to the conditions specified in that order including the following:

"b) The permission/lease period will automatically expire by 30-9-2006 and no extension of period will be granted whatsoever.

k) The lease period is up to 30-9-2006 only and will not be extended any further period and he is not entitled to claim any loss and damages against any cause whatsoever, if any, due to natural calamities etc.

m) The bidder shall not be eligible for getting leasehold rights for the second year by enhancing 10% of the bid amount as stipulated under Rule 9-P of the rules issued in G.O.Ms.No.1, I & C Department, dated 1-1-2001."

One month and eleven days before the expiry of the term of lease granted to him, Gubbala Rama Dasu deposited lease amount for the second year along with 10% enhancement.

The petitioner's grievance is that instead of taking action in accordance with Rule 9-P of the Rules, District Panchayat Officer, East Godavari at Kakinada and Member-Convener, District Level Committee (Sand Auctions) issued notice dated 17-9-2006 for grant of lease for the period from 6-10-2006 to 30-9-2007. According to the petitioner, the auction notice is clearly contrary to the scheme of Rule 9-P, which entitles its representative to get lease for the second year as of right and clause (m) contained in order dated 27-3-2006 is liable to be ignored being contrary to the said rule.

Before proceeding further, we may mention that initially, this petition was listed before the learned Single Judge. On 28-9-2006, the learned Single Judge directed the same to be placed before the appropriate Division Bench and this is how the matter has been listed before the Division Bench.

Learned counsel for the petitioner strongly relied on the language of Rule 9-P of the Rules and argued that the petitioner is entitled to lease for the second year as of right and the action of the District Panchayat Officer and Member-Convener of the District Level

Committee to invite fresh applications is not only without jurisdiction, but is wholly arbitrary and illegal. Learned counsel emphasized that even though in terms of the conditions specified in order dated 27-3-2006, the term of lease granted to Gubbala Rama Dasu came to an end on 30-9-2006, those conditions are liable to be ignored in view of the plain language of Rule 9-P. He further argued that the judgment of the Division Bench in Writ Appeal No.2156 of 2005 – **Kudula Veera Venkata Satyanarayana v. Government of Andhra Pradesh and others** – decided on 20-2-2006 requires re-consideration because the same is based on misinterpretation of Rule 9-P of the Rules.

Learned Government Pleader appearing for respondent Nos.1 and 2 argued that the petitioner cannot question notice dated 17-9-2006 because the term of lease granted to Gubbala Rama Dasu was only up to 30-9-2006. He further argued that in view of the bar contained in clause (m) of the conditions embodied in order dated 27-3-2006, the lessee is estopped from claiming leasehold rights for the second year simply because he deposited 10% over and above the bid amount in terms of Rule 9-P of the Rules.

We have thoughtfully considered the respective submissions and perused the record.

For deciding the claim of the petitioner, it will be useful to notice Rule 9-B (1) and (2) and Rule 9-P of the Rules. The same read as under:

<u>Rule 9-B (1) and (2) of the Rules</u>:

"**9-B. Notification of the Sand bearing areas for granting leases by Sealed Tender cum Public Auction:**

1) All the sand bearing areas in the State shall be leased out by Sealed Tender-cum-Public Auction reach or Village-wise wherever applicable by Mandal Revenue Officer of Revenue Divisional Officer or Joint Collector for a specified period in

any case not more than two years with an yearly enhancement of 10% of the knocked down amount and subject to the conditions prescribed in the notice of Sealed Tender cum Public Auction as specified in Rule 9-C.

Note:

No reach/Village partly or fully covered by scheduled areas shall be leased out to any person who is not a member of Scheduled Tribe.

Explanation: For the purpose of this rule:-

a) The expression "Scheduled Tribes" shall have the same meaning assigned to it in Clause (26) of Article 360 of the Constitution of India; and

b) The expression "Scheduled Areas" shall have the same meaning assigned to it in Paragraph 6 of the fifth Schedule to the Constitution of India.

2) The District Level Committee as constituted under G.O.Ms.No.356, Industries and Commerce Department, dated 22-11-1999 and G.O.Ms.No.165, Industries and Commerce (MI) Department, dated 23-2-2000 respectively is competent authority to club or sub-divide reaches wherever necessary. The District Level Committee constituted is as follows:

Chairperson of Zilla Parishad	Chairperson of District Level Committee
Joint Collector	Member
Mandal President	Member (to be nominated by the Collector)
Sarpanch	Member (to be nominated by the Collector)
Assistant Director (Mines & Geology)	
District Panchayat Officer	Member-Convener

a) The District Level Committee shall consult the River Conservator with regard to the reaches falling under the River Conservancy Act, 1884. The Committee shall be competent to issue orders of stopping the lifting of sand, after giving due opportunity to the successful bidder if he

violates any condition of auction of lifting the sand against the provisions of the Andhra Pradesh (Andhra Area) Rivers Conservancy Act, 1884 (Act VI of 1886).

b) The District Level Committee shall be the authority competent to decide on any matter or problem arising during the course of implementation of these rules.

Rule 9-P of the Rules:

9-P. Payment of second year lease amount: The lessee shall pay the knocked down amount along with 10% enhancement towards the second year lease amount in the General Funds of Zilla Parishad and submit the challans to the District Panchayat Officer concerned on or before 45 days of the expiry of the first year lease period. If no such payment is received, the District Level Committee shall cancel the lease and forfeit the security deposit and shall make necessary arrangement for leasing out the area through sealed tender-cum-public auction. However, the Joint Collector, may condone the delay in payment of second year lease amount provided the lessee makes a request for the condonation of delay before the expiry of first year lease period. However, the District Level Committee may condone the delay in payment of second year amount received even after the expiry of the first year lease period in genuine cases. In respect of the reaches identified to the boatsmans' co-operative societies, the society shall pay the second year amount along with 10% enhancement in not more than four equal quarterly instalments and each instalment shall be paid well before commencement of each quarter. If no such payment is received, the District Level Committee shall cancel the lease and forfeit the security deposit."

In **Kudula Veera Venkata Satyanarayana v. Government of Andhra Pradesh and others**, the Division Bench considered the question whether respondent No.4, in whose favour lease was granted for a period of one year, could claim extension of lease as of right and renewal granted in his favour was legally tenable. The Division Bench noted the scheme of Rule 9-B read with Rule 9-P of the Rules and

observed:

> "An analysis of Rule 9-B (1) shows that sand bearing areas in the State are required to be leased out by Sealed Tender-cum-Public Auction, reach wise or village wise for a specified period which shall, in no case be more than two years with an yearly enhancement of 10% of the knocked down amount. Rule 9-P which regulate payment of second year lease amount lays down that the lessee shall pay the knocked down amount along with 10% enhancement in the General Funds of Zilla Parishad and submit challans to the District Panchayat Officer on or before 45 days of the expiry of the first year lease period failing which, the District Level Committee shall cancel the lease and forfeit the security amount and also make necessary arrangement for leasing out the area through Sealed Tender-cum-Public Auction. However, the Joint Collector can entertain the request for condonation of delay. The District Level Committee can also condone the delay in genuine cases. If these two rules are read together, it becomes clear that the provision of Rule 9-P applies only when the lease is auctioned for a period of two years and not otherwise. The penal clause contained in this rule requiring the District Level Committee to cancel the lease and forfeit the security deposit and also making necessary arrangement for leasing out area through Sealed Tender-cum-Public Auction gets attracted only when the lease is for more than one year. Neither Rule 9-B (1) nor Rule 9-P postulates renewal of lease granted for a period of one year. Rule 9-B (1) does contemplate grant of lease for a period of two years at a time, but there is nothing in the language of that rule which would suggest that lease notified and granted for one year can be renewed for another year. If the rule making authority intended to provide for payment of enhanced amount for renewal of lease, then there was no occasion for incorporating the penal clause in Rule 9-P for cancellation of lease and forfeiture of security deposit."

The Division Bench then proceeded to hold:

> "In view of the above analysis of the Rules, we hold that

> the competent authority can grant lease for a period of two years and, in that event, the second year lease amount has to be paid in accordance with Rule 9-P of the Rules, but if the lease is granted only for one year, then the concerned authority does not have the power or authority to renew the lease. The only course open to the competent authority in the second eventuality is to hold fresh auction in terms of Rule 9-B (1)."

In our opinion, the above interpretation of Rule 9-P represents the correct position of law and does not warrant re-consideration. At the cost of repetition, we deem it proper to observe that Rule 9-P gets attracted only when the lease granted for a period of two years under Rule 9-B and not otherwise.

In the present case, the lease was granted to Gubbala Ramadasu for a period of just over six months with a clear condition that the lessee shall not be entitled to get leasehold rights for the second year by enhancing 10% of the bid amount in terms of Rule 9-P. The lessee accepted the lease knowing fully well that in terms of clauses (b) and (k) of the conditions embodied in order dated 27-3-2006, his lease would automatically come to an end on 30-9-2006 and the same will not be extended beyond that date and further that he shall not be entitled to seek lease for second year by simply paying 10% over and above the bid amount. Therefore, the lessee is estopped from questioning the auction notice issued by the competent authority or seek a direction for grant of lease to him for the second year.

For the reasons mentioned above, the writ petition is dismissed.

G.S.SINGHVI, C.J.

23rd October, 2006

C.V. NAGARJUNA REDDY, J.

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